IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 273 of 1986

For Approval and Signature :

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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GUJARAT STATE FERTILISER - Appellant(s)

Versus

KANTIBHAI CHATURBHAI PATEL - Defendant(s)

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Appearance :

MR HARSHADRAI DAVE for Mr SN SHELAT for Appellant
MR GM JOSHI for Defendant

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT

Date : 21/06/2007

ORAL JUDGMENT

This Appeal preferred under Section 100 CPC by

the Gujarat State Fertilizer Company Limited, the defendant in Regular Civil Suit No. 302 of 1975, arises from the judgment and order dated 30th September, 1986 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No. 193 of 1982.

The respondent-plaintiff was employed by the defendant. The plaintiff's service came to be terminated on the ground of suitability. Feeling aggrieved, the plaintiff instituted Regular Civil Suit No. 302 of 1975 in the Court of learned Civil Judge [SD], Vadodara. The suit was contested by the defendant by written statement Exh.12. The learned Civil Judge, by judgment and decree dated 30th April, 1982 dismissed the suit. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 193 of 1982 in the Court of learned District Judge, Vadodara. The appeal was heard and decided by the learned Assistant Judge. The learned Assistant Judge was pleased to hold that the defendant was a "***State***" within the meaning of *Article* 12 of the Constitution of India and that the plaintiff was entitled to protection under *Article* 311 of the Constitution. In

view of the said finding, the learned Assistant Judge, by *impugned* judgment and order dated 30th September, 1986, allowed the appeal, decreed the suit in favour of the plaintiff and directed the defendant to reinstate the plaintiff back in service with retrospective effect from 19th February, 1975 and to pay him all backwages right from 19th February, 1975 till the date of reinstatement in service. Feeling aggrieved, the defendant has preferred the present Appeal.

The Appeal is admitted to final hearing on the following substantial questions of law :-

[1] Whether in the facts and circumstances of the case the defendant company is a "*State*" within the meaning of *Article* 12 of the Constitution of India?

[2] Whether the termination of the services of the plaintiff under Rule 44 is invalid in law ?

[3] Whether in the facts and circumstances of the case the lower Appellate Court was wrong in holding that the action was *malafide* though it was contended that the termination of services of the plaintiff was on account of loss of confidence.

[4] Whether the lower Appellate Court was justified in passing a decree for arrears of

wages in absence of a specific issue? If yes, how the arrears should be computed ?

The question whether the defendant-Gujarat State Fertilizer Company Limited is a "***State***" within the meaning of Article 12 of the Constitution is no more *res integra*. The Division Bench of this Court in the matter of ***Gujarat State Fertilizer's Co. Limited & Anr. vs. Association of Officers, G.S.F.C., Fertilizernagar*** [1995 (2) GLH 179] has held that it is not a '***State***' within the meaning of *Article* 12 of the Constitution. In any view of the matter, the plaintiff not being a Civil servant was not entitled to protection under *Article* 311 of the Constitution of India.

In above view of the matter, the Appeal is allowed. The *impugned* judgment and order dated 30th September, 1986 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No. 193 of 1982 is quashed and set-aside. The judgment and decree dated 30th April, 1982 passed by the learned Civil Judge {SD} Vadodara in Regular Civil Suit No. 302 of 1975 is restored.

Both the learned advocates agree that pending this Appeal the respondent-plaintiff has been paid the dues payable under the *impugned* judgment and order passed by the lower appellate Court. In view of passage of time, the appellant-Company may consider not to recover such amount as may have been paid to the respondent-plaintiff.

{Ms. R.M Doshit, J.}

*Prakash**